

AMENDED IN SENATE APRIL 29, 1999

**SENATE BILL**

**No. 383**

**Introduced by Senator Haynes**

February 11, 1999

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An act to amend Section 1717.5 of the Civil Code, relating to attorney's fees.

LEGISLATIVE COUNSEL'S DIGEST

SB 383, as amended, Haynes. Attorney's fees.

Under existing law, in any action on a contract based on a book account that does not provide for attorney's fees and costs, the prevailing party on the contract is entitled to reasonable attorney's fees and costs, and the court is required to fix the attorney's fees in an amount that does not exceed the lesser of \$660 or 25% of the principal obligation owing under the contract.

This bill would revise these provisions by requiring the court to fix the attorney's fees in an amount that does not exceed the lesser of \$800 *for a consumer obligation* and \$1,250 *for other obligations*, or 25% of the principal obligation owing on the contract. *The bill would define "consumer obligation" for these purposes.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1717.5 of the Civil Code is  
2 amended to read:

1 1717.5. Except as otherwise provided by law or where  
2 waived by the parties to an agreement, in any action on  
3 a contract based on a book account, as defined in Section  
4 337a of the Code of Civil Procedure, entered into on or  
5 after January 1, 1987, which does not provide for  
6 attorney's fees and costs as provided in Section 1717, the  
7 party who is determined to be the party prevailing on the  
8 contract shall be entitled to reasonable attorney's fees in  
9 addition to other costs.

10 Reasonable attorney's fees awarded pursuant to this  
11 section shall be fixed by the court in an amount that shall  
12 not exceed the lesser of *eight hundred dollars (\$800) for*  
13 *a consumer obligation and one thousand two hundred*  
14 *fifty—(\$1,250) dollars (\$1,250) for other obligations*, or 25  
15 percent of the principal obligation owing under the  
16 contract. If a party is found to have no obligation owing  
17 on a book account, the court shall award that party  
18 reasonable attorney's fees not to exceed *eight hundred*  
19 *dollars (\$800) for a consumer obligation and one*  
20 *thousand two hundred fifty dollars (\$1,250) for other*  
21 *obligations*. These attorney's fees shall be an element of  
22 the costs of the suit. *The term consumer obligation means*  
23 *any obligation or alleged obligation of a person to pay*  
24 *money arising out of a transaction in which the person*  
25 *obtained money, property, or services primarily for*  
26 *personal, family, or household purposes*.

27 If there is a written agreement between the parties  
28 signed by the person to be charged, the fees provided by  
29 this section shall not be imposed unless that agreement  
30 contains a statement that the prevailing party in any  
31 action between the parties is entitled to the fees provided  
32 by this section.

33 This section does not apply to any action in which an  
34 insurance company is a party nor shall an insurance  
35 company, surety, or guarantor be liable under this  
36 section, in the absence of a specific contractual provision,  
37 for the attorney's fees and costs awarded a prevailing  
38 party against its insured.

39 This section does not apply to any action in which a  
40 bank, a savings association, a federal association, a state or

1 federal credit union, or a subsidiary, affiliate, or holding  
2 company of any of those entities, or an authorized  
3 industrial loan company, a licensed consumer finance  
4 lender, or a licensed commercial finance lender, is a  
5 party.

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